

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

IN RE:

EKAETTE TOM AKWA
Aka EKAETTE E. UKIH
APPELLANT

Case No. 15-1550
(Lead Case for Consolidation)

IN RE:

GREGORY JOHN BIRMINGHAM)
APPELLANT

Case No. 15-1800

SUPPLEMENTAL MOTION TO CONSOLIDATE APPEAL CASES
PURSUANT TO LOCAL RULE 28(a) AS TO *Jeremy v. J.P. Morgan Chase*
Bank (Case No.)
AND REQUEST THAT RESPONSES BE FILED WITHIN FIVE DAYS

EKAETTE TOM AKWA (“Akwa”) and GREGORY JOHN BIRMINGHAM (“Birmingham”) (Collectively, the “Appellants”), joined by CALVERT JEREMY AND JOLITA MERVINA JEREMY (the “Jeremys”) by and through undersigned counsel John D. Burns, Esquire, and The Burns Law Firm LLC, hereby files this Supplemental Motion to Consolidate Appeal Cases Pursuant to Local Rule 28(a) And Request that Responses Be Filed Within Five Days (the “Motion”) and states as follows:

The above captioned appeal has been well documented in prior filings, and the Appellants will spare the Fourth Circuit any long factual statements in support of this Motion. The Appellants have filed today a Motion to Extend Time on

Opening Brief/Appendix to November 3, 2015 and on Response Briefs to December 3, 2015, for the reasons set forth therein.

One factor identified was the issuance of an Order Directing Certification of the Jeremy Appeal to the United States Fourth Circuit. A copy of the Order entered in District Court case TDC-15-1632 entered on October 8, 2015 is attached hereto as ***Exhibit 1***. Although there are several other pending appeals on the same issues as are faced in *Akwa- Birmingham* herein (ie; Donaldson (Case No. 15-1781) and Abdosh (15-1891)), these appeals are in mediation and are not critical to the decisional process to warrant consolidation.

However, *Jeremy* is different. This case is important to the consolidated appeal because it involves a deed of trust provision consistent with the *Bradsher*¹ and related cases within the Fourth Circuit that have supported the theories of the Appellants herein. The appeal warrants inclusion because it demonstrates the similarity between the words “pledge” and “assign” as are found in Sections 2 and 11 of the relative deeds of trust herein, and differs from the deed of trust format found in *Akwa* and *Birmingham*. The factual matters in *Jeremy* are more fully set forth in a Motion For Permission to Appeal under Fed. R. App. P. 5, filed today. The Appellants prefer to incorporate such recitations hereto, rather than recite them anew,

¹ 427 B.R. 386 (Bankr. M.D.N.C. 2010)

so as to avoid burdening the Fourth Circuit with a repetitive pleading.

Additionally, since the undersigned on behalf of the Appellants has requested a further extension on the opening brief/appendix to November 3, 2015 (whether this consolidation is granted or not), the time for response to this Motion is requested to be reduced to 5 days. This will permit a brief review by the appellee(s) in these matters and if the *Jeremy* case is to be consolidated with *Birmingham* and *Akwa*, then such consolidation will not create any disharmony with the briefing extension that was requested.

The relief herein is requested pursuant to Local Rule 28(a). Counsel for all parties involved herein have been served.

WHEREFORE, the Appellants, and Jeremys, by undersigned counsel,
respectfully requests that the Court enter an Order:

- (i) Granting the Motion;
- (ii) Reducing time for response to this Motion to five days;
- (iii) Consolidating the *Jeremy* matter with the *Akwa-Birmingham* cases; and
- (iv) Granting such other and further relief as equity and justice may require.

Respectfully Submitted,

-----/S/ John D. Burns-----

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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2015, a copy of the foregoing Motion was served via first-class mail, postage prepaid, upon:

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-----/S/ John D. Burns-----

John D. Burns